



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

Sep 30, 2020, 8:13 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]
Plan ID No.: [REDACTED]

vs.

COVENTRY HEALTHCARE OF FLORIDA, INC.
D/B/A AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]
Plan ID No.: [REDACTED]

vs.

COVENTRY HEALTHCARE OF FLORIDA, INC.
D/B/A AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant consolidated cases on September 8, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner's Authorized Representative

For the Respondent:

Debra Wingo
Director of Long Term Care
Coventry Healthcare of Florida, Inc.
d/b/a Aetna Better Health of Florida, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce personal care services from 48 hours per week to 35 hours per week was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's adult companion care services (3 hour per week and an additional 5 hours per month) was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] ("[REDACTED]"), Petitioner's Authorized Representative and daughter, appeared at the Fair Hearing and provided testimony on Petitioner's behalf.

Debra Wingo, Director of Long Term Care, for Coventry Healthcare of Florida, Inc. d/b/a Aetna Better Health of Florida, Inc. ("Aetna") appeared as a representative on behalf of Respondent. Demaris Segura, Grievance and Appeals Manager for Aetna, appeared as a witness on behalf of Respondent. Dr. Olunwa Ikpeazu ("Dr. Ikpeazu"), Medical Officer for Aetna, appeared as a witness on behalf of Respondent.

Chrissy Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Interpreter Carla, translator number 266984 with Language Line Solutions, provided translation services for Petitioner.

Petitioner did not introduce any exhibits at the hearing. Prior to hearing, Respondent submitted a one hundred and twenty (120)-page evidence packet in AHCA case No. 20-[REDACTED].

The packet included the following documents: the Medicaid Fair Hearing Table of Contents; Acknowledgement of Third Party Medicaid Fair Hearing request, dated July 13, 2020; Notice of Adverse Benefit Determination (“NABD”), dated June 8, 2020; appeal acknowledgement letter from Aetna to Petitioner, dated June 12, 2020; Notice of Plan Appeal Resolution, dated June 25, 2020; Long Term Care Person-Centered Care Plan, signed June 26, 2018; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated July 13, 2020; Department of Elder Affairs Level of Care Redetermination Form, request date May 27, 2020; Caregiver Supplemental Assessment, dated July 13, 2020; Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program overage Policy (March 2017) (“LTC Coverage Policy”); Florida Medicaid Home Health Visit Services Coverage Policy (November 2016); and Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Coverage Policy”). Absent an objection, the undersigned admitted Respondent’s one hundred and twenty (120)-page hearing packet into evidence as Respondent’s Composite Exhibit 1.

Prior to hearing, the Respondent submitted a one hundred and twenty (120)-page evidence packet in AHCA case No. 20-██████████. The packet included the following documents: the Medicaid Fair Hearing Table of Contents; Acknowledgement of Third Party Medicaid Fair Hearing request, dated July 13, 2020; Notice of Adverse Benefit Determination (“NABD”), dated June 8, 2020; appeal acknowledgement letter from Aetna to Petitioner, dated June 12, 2020; Notice of Plan Appeal Resolution, dated June 25, 2020; Long Term Care Person-Centered Care Plan, signed June 26, 2018; 701B, dated July 13, 2020; Department of Elder Affairs Level of Care Redetermination Form, request date May 27, 2020; Caregiver Supplemental Assessment, dated July 13, 2020; LTC Coverage Policy; Florida Medicaid Home Health Visit Services Coverage Policy

(November 2016); and PC Coverage Policy. Absent an objection, the undersigned admitted Respondent's one hundred and twenty (120)-page hearing packet into evidence as Respondent's Composite Exhibit 2.

Prior to hearing, the Respondent submitted a twenty seven (27)-page evidence packet in AHCA case No. 20-██████ and 20-██████. The evidence packet consisted of the following documents: Evidence Packet Supplemental Documents Summary; Comprehensive LTSS Plan of Care, dated July 29, 2020; and 701B, dated July 29, 2020.¹ Absent an objection from Petitioner, the undersigned admitted Respondent's evidence packet into evidence as Respondent's Composite Exhibit 3.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Aetna's Long-term Care ("LTC") plan. See Respondent's Composite Exhibit 1 at page 44. Aetna is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is 84-years old. *Id.* Petitioner lives with her daughter who is her primary caregiver. *Id.* at 51 and Respondent's Composite Exhibit 3 at page 8. Petitioner suffers from "cognitive and language impairment" and increased muscle weakness. *Id.* at 51. Petitioner has a history of stroke, was diagnosed with advanced stage Dementia, and is unable to follow simple instructions. *Id.* at 51 and 54, and Respondent's Composite Exhibit 3 at page 9. Petitioner's most recent 701B assessment states that Petitioner is alert, but confused and disoriented to time, person, and space. See Respondent's Composite Exhibit 3 at page 9. Her memory, attention, and

¹ Page numbers refer to the pages of the combined exhibit.

concentration are severely impaired. *Id.* Petitioner's language is incoherent and repetitive, and she is not able to verbalize her needs. *Id.*

3. Petitioner experienced a significant decline in health status in [REDACTED] 2020. See Respondent's Composite Exhibit 3 at page 8 and 10. Petitioner was hospitalized from [REDACTED] 2020, to [REDACTED] 2020, due to respiratory failure. *Id.* at 11. She was discharged with a peg tube for feeding due to risk of aspiration as well as skilled nursing services seven times per week for one month. *Id.* at 11 and 14. Since the hospitalization, Petitioner's mental health has also declined. *Id.* at 16.

4. With regard to Petitioner's Activities of Daily Living ("ADLs"), Petitioner needs total assistance (cannot do at all) with bathing, dressing, eating using the bathroom, transferring and walking/mobility. *Id.* at 11. Petitioner is bed bound, requires two assistants for safe transfer, and requires frequent repositioning to prevent wounds. *Id.* She is feeding tube dependent. *Id.*

5. With regard to Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, using the telephone, managing money, preparing meals, shopping, managing medication and using transportation. *Id.* at 12.

6. Petitioner's current plan of care, dated July 29, 2020, includes: five (5) hours per week of homemaker services, three (3) hours per week of adult companion care services, five (5) hours per month of adult companion care services, forty-eight (48) hours per week of paid personal care services, skilled nursing services seven (7) times weekly for one month, and physical therapy three (3) times weekly for thirteen (13) visits. See Respondent's Composite Exhibit 3 at pages 1 – 3.

7. On December 24, 2019, Respondent issued an NABD reducing Petitioner's personal care services and terminating Petitioner's companion care services. See Respondent's Composite Exhibit 1 at pages 16 – 20. The NABD explained the basis for the reduction and termination of services as follows:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) checked below: *(See Rule)*

Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

X Other authority

The facts that we used to make our decision are:

Aetna Better Health of Florida has conducted a review of your current care plan. We will not approve continuation of this care plan as you are receiving more hours than you need. You are currently getting 48 hours of Personal Care Services weekly, 5 hours of Homemaker Services weekly, and 3 hours of Adult Companion Care Services weekly, for a total of 56 hours of a Home Health Aide weekly and 5 hours of Adult Companion Care Services monthly. You live with your caregiver. We have records dated 5/27/2020 that shows you need total assistance with bathing, dressing, transferring, eating, walking/mobility and using the bathroom. You need

total assistance with shopping, light housekeeping, doing laundry, meal preparation, managing money, managing medicines, and using the telephone.

We do not see that you:

- . have had any change in your condition.
- . do not have enough care.
- . are at risk of isolation.
- . have had any recent hospitalizations.

You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. Based on the clinical records we have, your new care plan will be, 35 hours of Personal Care Services weekly and 5 hours of Homemaker Services weekly, for a total of 40 hours of a Home Health Aide weekly. We will no longer approve Adult Companion Care Services as your caregiver can provide companionship to you. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long term Care Program.

8. On June 11, 2020, Petitioner requested a plan appeal for the reduction of personal care services and the termination of companion care services. *Id.* at 27. Petitioner received an NPAR, dated June 25, 2020, upholding the reduction in personal care services and the termination of adult companion care services. *Id.* at 36. The NPAR explained the basis for Respondent's actions as follows:

On June 11, 2020 we received your timely plan appeal request regarding Aetna Better Health of Florida's Notice of Adverse Benefit Determination dated June 8, 2020, NABD Number [REDACTED], reducing Personal Care Services from (48 hrs to 35 hrs weekly) and termination of Companion hours provided to [Petitioner].

On June 24, 2020, after consideration of the information you provided to Aetna Better Health of Florida in support of your plan appeal, Aetna Better Health of Florida hereby denies your plan appeal. As a result, [Petitioner] will receive 35 hours of personal care weekly, 5 hours of homemaker services weekly, for a total of 40 hours of a home health aide weekly, effective 6/25/2020.

Dr. Avril Anthony-Wilson, MD, Medical Director, Florida Board Certified in Family Medicine reviewed your appeal. Aetna Better Health of Florida reviewed your total weekly personal care services of 56 hours. We will not continue to approve all this request. You live with your caregiver. The records we have do not show:

- a change in your condition.
- any recent hospitalizations.
- a lack of enough care.
- risks of isolation

Based on the clinical records we have, your new care plan will be 35 hours of personal care weekly, 5 hours of homemaker services weekly, for a total of 40 hours of a home health aide weekly. You live with your caregiver. We will no longer approve Adult Companion Care Services as your caregiver can provide companionship to you. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-term Care Program page 4-7.

Id. at 36.

9. On July 2, 2020, Petitioner requested a Fair Hearing. On July 28, 2020, the Office of Fair Hearings issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, which scheduled the hearing for August 18, 2020. At the Fair Hearing, ██████████ requested a continuance for additional time to review the hearing exhibits. The undersigned granted the continuance by stipulation of the parties and rescheduled the Fair Hearing for September 8, 2020.

10. At the September 8, 2020, Fair Hearing, Ms. Wingo acknowledged that Petitioner was hospitalized on ██████████ 2020, for respiratory failure and that Petitioner's health has worsened since that time. She testified that Petitioner's case manager completed a "significant change 701B assessment" on July 29, 2020. She further argued that, although the NPAR was issued prior to Petitioner's hospitalization and declining health, Respondent's action in this matter is supported by Petitioner's 701B assessments and the clinical documents.

11. Dr. Ikpeazu asserted that long term care services are intended to supplement the care given by family members. Dr. Ikpeazu argued that thirty-five (35) hours per month of personal

care services are sufficient to cover Petitioner's needs. She calculated Petitioner's personal care hours as follows:

- For total assistance with bathing, Petitioner was given 40 minutes per day or a total of 5 hours per week.
- For total assistance with dressing, Petitioner was given 30 minutes per day or 3.5 hours per week.
- For total assistance with eating, Petitioner was given 1.5 hours per day or 10 hours per week.
- For total assistance using the bathroom, Petitioner was given one hour per day or 7 hours per week.
- For total assistance with walking and transfers, Petitioner was given 1.5 hours per day or 10 hours per week.

12. Dr. Ikpeazu testified that Petitioner was released with skilled nursing services for "up to" two hours per day and Physical Therapy services three times per week for thirty minutes per visit. She asserted that, although Petitioner's health declined after her hospitalization, there are enough services in place to meet Petitioner's medical needs. Dr. Ikpeazu testified that Petitioner's current plan of care includes 5 hours of homemaker services.

13. Dr. Ikpeazu asserted that companion care services are unnecessary, because there is no risk of social isolation given that Petitioner lives with her family member (██████████). ██████████ works full time from home as a mental health counselor and is willing and able to assist Petitioner. See Respondent's Composite Exhibit 3 at page 23.

14. ██████████ argued that the proposed changes are not justified, because Petitioner’s mental and physical condition has deteriorated since her hospitalization. She testified that Petitioner needs total assistance with all her ADLs and is not alert. See Respondent’s Composite Exhibit 3 at page 9. She testified that Petitioner is bed bound and must be turned regularly to prevent sores. *Id.* at 11. ██████████ added that Petitioner takes more medication since she was hospitalized. ██████████ further asserted that Petitioner’s skilled nursing service does not last “two hours” per visit, and she indicated that the services Petitioner received upon release from the hospital have terminated.

CONCLUSIONS OF LAW

15. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

16. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

17. Because Respondent is reducing existing personal care services and terminating existing companion care services, Fla. Admin. Code R. 59-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

18. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and adult companion care services:

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

...

4.2.1.1. Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

...

LTC Policy at pages 1-8.

19. The Florida Medicaid Definitions Policy (August 2019) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

25. In the instant case, Petitioner appealed Respondent's reduction of Petitioner's personal care hours from forty-eight (48) hours per week to thirty-five (35) hours per week and Respondent's termination of Petitioner's adult companion care services. *See supra* ¶8.

Personal Care Services

20. In the instant case, Respondent reduced Petitioner's personal care services from 48 hours per week to 35 hours per week. *See supra* ¶ 8. As established on the record by the evidence and testimony, Respondent reduced personal care services because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary; specifically, Petitioner's current level of services exceeds her needs. *See supra* ¶ 7 – 8. The NPAR states: "[w]e do not see that you: have had any changes in your condition[,] do not have enough care[,] are at risk of social isolation[, or] have had any recent hospitalizations." *See supra* ¶ 7 - 8. Section 1.3.14(b) of the LTC Policy requires that the LTC services at issue "[b]e

individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs."

21. Because the Petitioner is enrolled in a Florida Medicaid LTC program, *supra* ¶ 1, the LTC Policy governs Respondent's reduction of personal care services. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the LTC Policy; do not duplicate another service; and meet the criteria as specified in the LTC Policy. *See supra* ¶ 19. Section 4.2.2.6 of the LTC Policy states that personal care services are "[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." *See supra* ¶19.

22. The evidence presented in this case reflects that Respondent's reduction of personal care services is not supported by the circumstances of this case. Specifically, the above LTC Policy definition of "personal care services" includes assistance for a recipient's ADLs and IADLs. Regarding ADLs, the record reflects that Petitioner needs total assistance with bathing, dressing, eating using the bathroom, transferring and walking/mobility. *See supra* ¶ 4. Further, Petitioner is bed bound, requires two assistants for safe transfer, and requires frequent repositioning to prevent wounds. *See supra* ¶ 4. Petitioner is feeding tube dependent since [REDACTED] 2020. *See supra* ¶ 4. Regarding Petitioner's IADLs, the record shows that Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, using the telephone, managing money, preparing meals, shopping, managing medication and using transportation. *See supra* ¶ 5. At the Fair Hearing, Dr. Ikpeazu calculated Petitioner's personal care service needs based on a calculation of Petitioner's ADLs only. *See supra* 11 – 13. Dr. Ikpeazu's testimony and

calculations do not address Petitioner's aforementioned IADLs, nor does the record contain any calculation of how much time is required to complete each IADL. Dr. Ikpeazu testified that Petitioner receives 5 hours per week of homemaker services, but did not explain how those hours were calculated or explain why they are sufficient to cover all of Petitioner's IADLs. According to the LTC Policy definition of personal care services, *supra* ¶19, Respondent's calculations of Petitioner's need for personal care services should have included the time it takes to complete ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. Because Respondent did not include Petitioner's IADLs in the calculation of Petitioner's personal care service needs, Respondent did not demonstrate by a preponderance of the evidence that 48 hours are in excess of Petitioner's personal care service needs.

23. Additionally, the NPAR issued in this case states that Petitioner's services are being reduced, in part, because there have been "no changes in Petitioner's condition" and "no recent hospitalizations." *See supra* ¶ 8. To the contrary, the record demonstrates that Petitioner's health is in decline and that she was recently hospitalized subsequent to the NPAR. *See supra* ¶ 3, 10 and 15. Petitioner is 84-years old and suffers from advanced stage dementia. *See supra* ¶ 2. Petitioner has a history of stroke with "cognitive and language impairment" and she has been experiencing increased muscle weakness since ██████2020. *See supra* ¶ 2. Petitioner is unable to follow simple instructions. *See supra* ¶ 2. Petitioner was hospitalized due to respiratory failure from ██████ 2020, to ██████ 2020. *See supra* ¶ 3, 10 and 15. She was discharged with a peg tube for feeding due to risk of aspiration. *See supra* ¶ 3. Respondent's witness, Ms. Wingo, acknowledged that Petitioner was hospitalized in ██████ 2020 (after the NPAR was issued), and she

admitted that Petitioner's health has worsened since her hospitalization. *See supra* ¶ 10. Accordingly, Respondent did not demonstrate by a preponderance of the evidence that a reduction in personal care services is warranted due to changes in Petitioner's condition and or recent hospitalizations.

24. Finally, the NPAR states, and Respondent's witnesses argued at hearing, that Petitioner has enough services and natural support in place despite her declining health. *See supra* ¶ 10 and 13. Ms. Wingo and Dr. Ikpeazu point to the fact that Petitioner was released from the hospital with skilled nursing services and physical therapy to show that Petitioner has enough services and natural support to meet her medical needs. However, there is conflicting evidence in the record concerning the duration of Petitioner's skilled nursing services. Ms. Wingo testified that the skilled nursing services are being provided for "up to two hours" per day for 13 weeks. Ms. Wingo's testimony conflicts with Respondent's Supplemental Documents Summary, which states that Petitioner was "discharged with skilled nursing 7 visits (one month)." *See supra* ¶ 3 and 6. [REDACTED] disputed that the skilled nursing visits last for "two hours," and she indicated that the skilled nursing and physical therapy services have already terminated. *See supra* ¶ 10 and 15.

25. Section 1.3.14 of the LTC Policy requires that "LTC supportive services must . . . [b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *See supra* ¶19. As discussed above, Respondent failed to demonstrate that Petitioner's current level of care exceeds her needs. Respondent's calculation of Petitioner's personal care needs is inconsistent with the LTC Policy definition of personal cares services because the calculation does not take into consideration the time it takes to complete Petitioner's IADLs. Moreover, the NPAR, which

provides the basis for the reduction, conflicts with the testimony of Respondent's witnesses and record evidence showing that Petitioner's health is in decline and that Petitioner has been recently hospitalized. Finally, Respondent did not establish how much skilled nursing services Petitioner currently receives and whether the services are ongoing or already terminated. Accordingly, Respondent failed to demonstrate that Petitioner's current level of personal care services are not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment or in excess of Petitioner's needs.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent failed to prove by a preponderance of the evidence that the reduction of personal care services was correct.

Companion Care Services

28. Respondent terminated Petitioner's adult companion care services, which consisted of 3 hours weekly and 5 hours monthly. *See supra* ¶ 8 and 9. Respondent's rationale for terminating the services was that Petitioner's request failed to meet the requirements of medical necessity; specifically, Petitioner receives more services than she needs because she lives with her caregiver and is not at risk of isolation, *supra* ¶ 7, 8, 9 and 12, and 14. As provided in the LTC Policy, adult companion care is intended to provide "non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee." *See supra* ¶ 19. Section 1.3.14(b) of the LTC Policy requires that the LTC services at issue "[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs."

29. The evidence of record demonstrates that Petitioner lives with her primary caregiver, who is willing and able to provide natural support. See supra ¶ 8, 9 and 12, and 14. [REDACTED] works from home. See supra ¶ 13. There was no testimony or evidence of record indicating that Petitioner is at any risk of social isolation. Thus, Respondent established that the adult companion care services at issue are in excess of Petitioner's needs and no longer medical necessary, according to the LTC Policy and the Definitions Policy.

27. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that the termination of adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of personal care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction of personal care services is **GRANTED**.

Respondent's termination of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of adult companion care service is **DENIED**.

DONE and ORDERED this 30th day of September, 2020, in Tallahassee, Leon County, Florida.



Laura Gallagher
20-[REDACTED] & 20-[REDACTED]
2020.09.30 07:14:37
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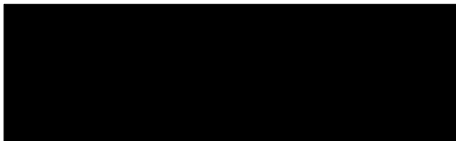
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



**Coventry Healthcare of Florida, Inc.
d/b/a Aetna Better Health of Florida, Inc.
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**AHCA Medicaid Hearing Unit
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